

CONSTABLES - Fee for trial or confession in justice court.

4-20

April 11, 1934



Honorable George B. Padget
Prosecuting Attorney
Daviness County
Gallatin, Missouri

Dear Sir:

Your request of March 30th for an opinion is
as follows:

"I desire your opinion on a little matter pertaining to the fee's legally collectable by a Sheriff. I find under Sec. 11791 R. S. 1929, entitled "Fees of sheriffs, county marshals and other officers", where it provides a fee in every trial in a criminal case, or confession, of \$1.00; Under Sec. 11777, entitled "Fees of constables". I find no provision allowing a constable a fee of \$1.00 or any fee in a trial of a criminal case, or for a confession. Now will you give me an opinion on the two following questions, and oblige. 1st, is a constable entitled to a fee of \$1.00 in a criminal trial, or a confession in a justice of the peace court?, and 2nd, where a county sheriff is acting in a justice peace court, is the sheriff entitled to a fee of \$1.00, or any fee in case of a criminal trial or a confession in the justice of the peace court?."

The pertinent parts of the statute involved
in this matter are as follows:

Section 11791, R. S. No. 1929:

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"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

* * * * *

For every trial in a criminal case
or confession \$1.00."

Certain specific fees are allowed constables under Section 11777 R. S. No. 1929, but the statute is silent as to any fee for the constable in the trial of a criminal case or confession in a justice court.

These two statutes (11791 and 11777) are in "pari materia". They relate to the same subject, namely, compensation officers for services rendered in the trial of a criminal case. Section 11791, insofar as its term, "other officers", is concerned, is a general statute and this term would embrace services rendered by anyone else entitled by law to perform the duties ordinarily performed by sheriff or county marshal, and incidentally these duties are daily performed by, and common to, the office of constable. Section 11777, relating to fees of a constable, is a special statute. The two are not repugnant to each other and therefore should be construed so far as to harmonize the two, since this is the general rule of a statutory construction. *Tevis v. Foley*, 30 S. W. (2d) 68 (1930). It is the duty of a court to harmonize statutes relating to the same subject matter if possible, and to give effect to each. *U. S. Veterans Bureau v. Glenn*, 46 S. W. (2d) 200.

It is, therefore, the opinion of this office that a constable comes within that class designated in Section 11791 as "other officers", and that the constable is entitled to a fee of \$1.00 for every trial in a criminal case or confession in the justice court wherein he is the attending officer in the court.

Yours very truly,

APPROVED:

ROY McKITTRICK
Attorney General

FRANKLIN E. REAGAN
Assistant Attorney General

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